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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, prepared pursuant to Council resolutions 17/4 and 35/7.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada*

Contents

		Page
I.	Introduction	3
II.	General context	3
III.	Legal and policy framework	4
IV.	Awareness of business and human rights and opportunities to promote the implementation of the Guiding Principles	4
V.	Business respect for human rights	5
	A. In Canada	5
	B. Outside Canada	5
	C. Policy instruments and policy areas relating to the Guiding Principles	7
VI	Specific issues	9
	A. Labour rights	9
	B. Women's rights	10
	C. Human rights defenders and civic space	11
	D. Indigenous peoples	12
VII.	Extractive industries	14
VIII.	Lessons from the Mount Polley dam breach	15
IX.	Access to effective remedies	16
	A. Ombudsperson	16
	B. National Contact Point	17
	C. Courts	17
X.	National action plan	18
XI.	Conclusions and recommendations	19
	A. Overall remarks	19
	B Recommendations to the Government	19
	C. Recommendation to businesses and industry associations	21
	D. Recommendations to civil society organizations	21
	E. Recommendation to the Toronto Stock Exchange	22

* Circulated in the language of submission and French only.

I. Introduction

1. Further to Human Rights Council resolutions 17/4 and 35/7, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Surya Deva and Anita Ramasastry, visited Canada from 23 May to 1 June 2017, at the invitation of the Government. The purpose of the visit was to assess the efforts made to prevent, mitigate and address adverse human rights impacts of business-related activities, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (see A/HRC/17/31, annex).

2. The experts met with government officials from federal departments and agencies (Global Affairs Canada, the Department of Justice, Employment and Social Development Canada, Indigenous and Northern Affairs Canada, the Canadian Environmental Assessment Agency, Environment and Climate Change Canada, Natural Resources Canada, Status of Women Canada, Innovation, Science and Economic Development Canada and Public Services and Procurement Canada), crown corporations (Export Development Canada, the Business Development Bank of Canada and Royal Canadian Mint), the Extractive Sector Corporate Social Responsibility Counsellor and the National Contact Point for the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD). The Working Group also met with officials from the provincial governments of Ontario, Alberta and British Columbia, the Cariboo Regional District and the city of Williams Lake.

3. Meetings were held with representatives of Canadian First Nations, civil society organizations and academia (in Ottawa, Toronto, Edmonton, Williams Lake, Vancouver and Calgary), the Canadian Human Rights Commission, the Alberta Human Rights Commission, the Toronto Stock Exchange, business associations and some of their members (the Mining Association of Canada, the Prospectors and Developers Association of Canada and the Canadian Employers Council), members of the Canadian network of the United Nations Global Compact and individual business enterprises, including Goldcorp, Imperial Metals and Suncor.

4. The Working Group thanks the Government for its support and assistance and its willingness to engage in a frank discussion on the challenges faced and lessons learned in promoting business respect for human rights. It also thanks the organizations, businesses, communities and individuals with whom it met for their openness and willingness to engage in dialogue.

II. General context

5. Canada is a federal, parliamentary, representative democracy under constitutional monarchy, with a population of more than 35 million. Canada is administratively divided into 10 provinces, 3 territories and 3,572 municipalities. While provinces are vested with their own executive, legislative and judicial powers under the Constitution, the territories have powers delegated to them by Parliament. The territories account for 40 per cent of the land mass but represent only about 3 per cent of the population.

6. Canada, which has one of the world's largest economies, is a member of OECD, the Group of Seven and the Group of 20.

7. Although Canada has a well-developed economy and ranks tenth in the 2016 Human Development Report of the United Nations Development Programme,[1] large disparities still exist between indigenous and non-indigenous peoples in the country. In his report of 2014, the Special Rapporteur on the rights of indigenous peoples highlighted the fact that, of the bottom 100 Canadian communities on the Community Well-Being Index, 96 were First Nations and only one First Nation community was in the top 100 (see A/HRC/27/52/Add.2,

[1] See http://hdr.undp.org/en/countries/profiles/CAN.

para. 15). The Working Group observed, through meetings with civil society organizations and indigenous communities, that the socioeconomic gaps between indigenous and non-indigenous peoples highlighted in the Special Rapporteur's report remained and that discrimination and sexual abuse against indigenous women and girls were pervasive.

III. Legal and policy framework

8. Canada is a party to seven core international human rights treaties.[2] Canada issued a standing invitation to the special procedures of the Human Rights Council in April 1999.

9. Canada has ratified all eight fundamental conventions of the International Labour Organization (ILO), covering freedom of association, the right to organize and collective bargaining, equal remuneration, the abolition of forced labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. It has ratified two ILO governance conventions and 26 of the 177 ILO technical conventions.

10. The human rights laws of Canada include the Canadian Charter of Rights and Freedoms of 1982[3] and the Canadian Human Rights Act of 1977,[4] which is part of the Constitution. There are also a number of provincial and territorial human rights agencies, which are specific to their geographical areas.[5]

11. In section 91 (24) of the Constitution Act, 1867, the federal Government is given legislative authority over "Indians, and lands reserved for the Indians", and the Indian Act is the principal instrument through which federal jurisdiction is exercised in relation to First Nations.[6] In section 35 (1) of the Constitution Act, 1982, the existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed. In 2011 and 2012, the Government introduced modernization efforts, including the repeal of article 67 of the Canadian Human Rights Act[7] and the introduction of the Family Homes on Reserves and Matrimonial Interests or Rights Act[8] and the Safe Drinking Water for First Nations Act.[9]

IV. Awareness of business and human rights and opportunities to promote the implementation of the Guiding Principles

12. The Working Group observed a generally low level of awareness among government officials, the private sector and State-owned enterprises, with the exception of some large multinational enterprises and a small set of government officials working specifically on corporate social responsibility, of their respective duties and responsibilities under the Guiding Principles on Business and Human Rights. The Working Group noted that several companies, crown corporations and business associations used the Guiding Principles mainly as a guide for human rights due diligence in the context of business operations outside Canada, especially in the extractive sector.

13. The Working Group observed a good understanding of the Guiding Principles among civil society organizations, which were often taking the lead in seeking their implementation by both government agencies and businesses.

14. The Working Group was encouraged to learn that Global Affairs Canada had developed guidelines on supporting human rights defenders that also addressed the role of businesses in respecting their human rights[10] and was looking at best practices to provide

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[2] See http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=31&Lang=EN.
[3] Available from http://laws-lois.justice.gc.ca/eng/Const/page-15.html.
[4] Available from http://laws-lois.justice.gc.ca/eng/acts/h-6/.
[5] See www.chrc-ccdp.gc.ca/eng/content/provincial-territorial-human-rights-agencies.
[6] Available from http://laws-lois.justice.gc.ca/eng/acts/i-5/.
[7] See www.aadnc-aandc.gc.ca/eng/1394023867658/1394024066806.
[8] Available from http://laws-lois.justice.gc.ca/eng/acts/F-1.2/.
[9] Available from http://lois.justice.gc.ca/eng/acts/S-1.04/FullText.html.
[10] See http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

guidance to businesses on how to improve their human rights policies both domestically and abroad.

15. The Working Group met with the United Nations Global Compact Network in Canada and held a constructive dialogue with business representatives that were part of the network. The Working Group was particularly interested in the efforts of the network to further advance gender equality and the Sustainable Development Goals and commended the Gender Equality Forum held prior to the Working Group's visit.[11] The Working Group observed that many of the companies in the Global Compact had a good understanding of the Guiding Principles but noted that more could be done to improve the dissemination of the Guiding Principles to make more business enterprises aware of their responsibilities.

16. The Working Group welcomed the efforts of the Canadian Human Rights Commission to promote the Guiding Principles through various initiatives, such as the memorandum of understanding between OECD and the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights on business and human rights.[12] The Working Group also acknowledged the efforts of the Commission to combat discrimination and promote the principle of equal opportunity through the dissemination of information on the federal, provincial and territorial human rights laws that are applicable to employers and employees.

V. Business respect for human rights

A. In Canada

17. The Working Group heard a number of testimonies about adverse impacts of the activities of the extractive industries on the environment and human rights, including the rights of indigenous peoples throughout Canada. Civil society organizations, such as Amnesty International, Mining Watch Canada, Oxfam, the Canadian Network on Corporate Accountability and World Vision Canada, to name but a few, provided substantial information on the adverse effects of business activities on local communities and indigenous peoples who live on the traditional lands. The Working Group also received updated information from civil society actors after the completion of its mission to Canada and will continue to monitor cases and future developments.

18. Issues raised by civil society organizations included difficulties in obtaining access to effective remedies for victims of business-related human rights abuses, labour rights abuses, discrimination against women, the lack of meaningful human rights impact assessments, concerns about inadequate consultations with First Nations and the need for federal, provincial and territorial authorities to develop new laws and initiatives to enhance corporate accountability. Other concerns included the need to protect the rights of migrant and seasonal workers, the inadequate follow-up to the Mount Polley dam breach, the use of strategic lawsuits against public participation and the need for an independent ombudsperson who could investigate business-related human rights abuses carried out at home and abroad.

B. Outside Canada

19. The Working Group observed that, at the federal level, efforts to promote business respect for human rights were currently focused on extractive companies operating overseas. The corporate social responsibility strategy adopted in 2014, entitled "Doing business the Canadian way: a strategy to advance corporate social responsibility in Canada's extractive sector abroad",[13] builds upon the experience and best practices gained

[11] See www.globalcompact.ca/genderequality2017/#summary.

[12] Available from www.oecd.org/daf/inv/mne/OECD_ICC_MoU.pdf.

[13] Available from www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng.

since the launch, in 2009, of the first corporate social responsibility strategy, entitled "Building the Canadian advantage: a corporate social responsibility strategy for the Canadian extractive sector abroad".[14] In addition to these advancements, the Working Group welcomes the creation of the independent Canadian Ombudsperson for Responsible Enterprise and a multi-stakeholder advisory body on responsible business conduct to advise the Government.[15]

20. Allegations of human rights abuses committed by Canadian companies operating abroad and the lack of access to remedies for victims have been raised by international human rights treaty bodies, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child (see CRC/C/CAN/CO/3-4, paras. 28–29). Alleged human rights abuses have also been tracked by civil society organizations. A recent report described 30 targeted deaths and 709 cases of "criminalization" associated with the operations of 28 Canadian companies during the period from 2000 to 2015.[16] Likewise, the Business and Human Rights Resource Centre database, focused on threats to human rights defenders overseas, found that, in 2017, attacks on defenders in the area of business and human rights were mainly related to the mining and agribusiness sectors and that a significant number of companies associated with such attacks were headquartered in Canada.[17]

21. The Working Group observed that the issue of human rights and Canadian extractive companies operating abroad has been a critical issue in Canadian policymaking for more than a decade. In 2006, the Government organized a series of four national round tables to examine the actions of Canadian extractive companies operating abroad in relation to human rights issues.[18] The objective of the round tables, held in Vancouver, Toronto, Montreal and Calgary, was to produce a report to Parliament containing recommendations on steps that could be taken to enable Canadian extractive sector companies operating in developing countries to meet or exceed international best practices relating to responsible business conduct. The final report of the round-table advisory group, entitled "National round tables on corporate social responsibility and the Canadian extractive industry in developing countries", was released in 2007.[19] The Working Group welcomed this initiative by the then Government and noted that the recommendations were still relevant today and should be implemented.

22. The Working Group was informed that the "Building the Canadian advantage" strategy had been developed in response to concerns by Canadians and international stakeholders about the environmental and social performance of Canadian mining and oil and gas firms abroad. Although the strategy was informed by the national round tables held in 2006, it did not implement all the recommendations from that process.

23. Bill C-300 on corporate accountability of mining, oil and gas corporations in developing countries, which was introduced in Parliament as a private member's bill in March 2011, sought to follow up on some of the recommendations from the round tables.[20] The Working Group heard from stakeholders that, although the bill had not been enacted in Parliament, it served as an indicator that the recommendations were still relevant. The Working Group therefore recommends that the Government revisit the recommendations.

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[14] Available from www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse-2009.aspx?lang=eng.

[15] See www.canada.ca/en/global-affairs/news/2018/01/the_Government_ofcanadabringsleadershiptoresponsiblebusinesscond.html.

[16] See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2886584.

[17] See www.business-humanrights.org/en/key-findings-from-the-database-of-attacks-on-human-rights-defenders-feb-2017.

[18] See www.pdac.ca/docs/default-source/priorities/public-affairs/csr-national-roundtables-background.pdf?sfvrsn=720e9e50_12.

[19] Available from www.pdac.ca/docs/default-source/public-affairs/csr-national-roundtables-advisory-group-report.pdf.

[20] See https://openparliament.ca/bills/40-3/C-300/.

24. The Working Group heard from stakeholders that the federal Government's approach to business and human rights is currently covered in its corporate social responsibility strategy for the extractive sector, an important foundational document that contains many laudable initiatives on promoting the respect of Canadian extractive companies operating abroad for human rights. The strategy focuses on promoting guidance on corporate social responsibility, including the Guiding Principles, fostering networks and partnerships, facilitating dialogue towards dispute resolution and strengthening the environment around corporate social responsibility.

C. Policy instruments and policy areas relating to the Guiding Principles

Corporate social responsibility strategy of Canada

25. The Working Group noted to the Canadian authorities that the 2014 corporate social responsibility strategy was narrow in scope and encouraged Global Affairs Canada to consider a broader policy focused on business and human rights that encompasses business respect for human rights across all sectors. While the extractive sector is an important part of the Canadian economy, a range of other business sectors are also in need of human rights guidance and leadership from the Government.

Human rights due diligence

26. The Guiding Principles provide that all business enterprises should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts, covering both their own business operations and their business relationships. The Working Group heard from many stakeholders that the Government could encourage more robust human rights due diligence by extractive sector companies and should also begin to address issues such as human trafficking and modern slavery, as well as other human rights abuses in global supply chains, including in the apparel sector. The Working Group encouraged the federal Government to explore ways and means to incentivize human rights due diligence by companies, including through regulations on mandatory due diligence and disclosure. Although the Extractive Sector Transparency Measures Act[21] is an example of an important transparency measure, the Working Group observed that the Government could do more to analyse the need for human rights disclosure and due diligence in specific sectors of the economy.

Global Affairs Canada and the Canadian Trade Commissioner Service

27. The Government states that it is committed to promoting responsible business practices and that it expects and encourages Canadian companies operating abroad to respect human rights and all applicable laws and to meet or exceed international standards for responsible business conduct, including the Guiding Principles.[22]

28. Much of the corporate social responsibility mandate is carried out by the Canadian Trade Commissioner Service and related government ministries focused on natural resources, such as Natural Resources Canada. The Working Group learned that Global Affairs Canada provides its trade officers posted overseas with training on key corporate social responsibility issues relating to the extractive sector. The Working Group also learned that public servants who work in the Trade Commissioner Service receive some training on corporate social responsibility and human rights. Further training on the expectations for responsible business conduct in the Guiding Principles would help to ensure the more effective implementation of the corporate social responsibility strategy. The Working Group also noted that, in addition to training for government employees, Global Affairs Canada could play a stronger role in the dissemination of the Guiding Principles with its sister trade and export programmes at the provincial level. While the Working Group did learn of examples of training on the extractive sector and human rights-

[21] Available from http://laws-lois.justice.gc.ca/eng/acts/E-22.7/.

[22] See the corporate responsibility strategy adopted in 2014, entitled "Doing business the Canadian way: a strategy to advance corporate social responsibility in Canada's extractive sector abroad".

related issues (e.g., operations in conflict zones and artisanal mining), it was apparent that more focused training and leadership on business and human rights were needed. In addition, Global Affairs Canada might consider providing human rights training to all its employees and adopting an integrated approach to business and human rights that includes its development and foreign affairs employees.

Advisory role of the Extractive Sector Corporate Social Responsibility Counsellor

29. The Extractive Sector Corporate Social Responsibility Counsellor advises extractive companies on the implementation of corporate social responsibility standards, reviews the corporate social responsibility practices of Canadian extractive companies operating abroad and assists companies and project-affected stakeholders outside Canada with dispute resolution. The Working Group, through its meeting with the Counsellor, noted that there was a need for greater clarity as to the role of the Counsellor with respect to providing access to remedies in cases relating to human rights abuses. The Working Group was of the understanding that the value of this unique institution could be reinforced by clarifying its relationship with the Canadian National Contact Point, so as to avoid duplication of functions. It also recommends that the Counsellor focus primarily on raising awareness of, advising on and building capacity around business respect for human rights in all sectors, not solely the extractive sector. Following the Working Group's visit, it was announced that an ombudsperson would be created and assume the advisory capacity of the Counsellor, whose mandate will expire in May 2018.

Export credit

30. Export Development Canada is a crown corporation that provides a range of trade-related financing to Canadian companies for overseas investment and trade activity. In its statement on human rights, Export Development Canada recognized that investment projects may have potentially significant impacts on the human rights of individuals and that, as is the case for other financial institutions, it must endeavour to assess the potential for adverse human rights outcomes for individuals directly affected by such projects.[23] Export Development Canada conducts its own country- and project-level risk assessments that include human rights aspects, with particular attention to investment projects that have a higher potential for posing human rights risks.[24] Civil society stakeholders, however, raised the concern that the process was not transparent and that some extractive companies that had been implicated in alleged human rights abuses still received export financing. The Working Group recommends that Export Development Canada consider additional ways to communicate with stakeholders about the nature of its decision-making, the steps taken after the provision of export credit and finance and its ongoing processes to ensure that the clients that it supports and the projects in which it is involved are aligned with the Guiding Principles.

Role of provincial trade and investment offices

31. It is the Working Group's assessment that, at present, the provincial governments are not actively involved in promoting business respect for human rights as part of their trade and investment promotion activities. Since most Canadian companies are incorporated at the provincial level, provincial governments have a particularly important role in deepening respect for human rights, in line with the Guiding Principles, through their trade promotion.

32. The Working Group learned that the provincial government of Alberta has an innovative office, the Alberta International Development Office, which forms part of its Economic Development and Trade Ministry. The Office coordinates the participation of the provincial government in global development work and helps to identify new areas of collaboration between the public and private sectors, foreign Governments and international

[23] See www.edc.ca/EN/About-Us/Corporate-Social-Responsibility/Documents/human-rights-statement.pdf.

[24] Ibid.

financial institutions. Since the Office already works with the private sector to promote economic development projects abroad, it has the opportunity to ask its private sector partners to respect human rights as a prerequisite to collaborating in projects abroad. This model could be adopted by other provincial trade offices that promote Canadian business overseas.

Trade support

33. Before receiving certain types of enhanced trade services from the Canadian Trade Commissioner Service, companies are required to sign an integrity declaration to declare that they will operate in a manner consistent with the OECD Guidelines for Multinational Enterprises and that they are doing business responsibly, ethically and within the law. Equally, trade advocacy support can be denied or withdrawn if companies fail to comply with this expectation and choose not to engage in good faith with the dialogue facilitation processes of the National Contact Point or the Office of the Extractive Sector Corporate Social Responsibility Counsellor.[25] Although such withdrawal of support (referred to as a penalty by Global Affairs Canada and its Trade Commissioner Service) is mentioned frequently in connection with the enhanced corporate social responsibility strategy for extractive companies, the policy applies to all Canadian companies operating abroad.

34. While noting that the potential for loss of trade-related government support was an important policy lever for the federal Government, the Working Group highlighted that it was unclear how effective it had been in producing tangible results with respect to changes in corporate practices or in providing greater access to effective remedies for victims of corporate-related human rights abuses. The Working Group also noted that the policy was reactive in nature, as it withdrew benefits if a problem arose and, thus, did not actively seek to promote or protect human rights. To date, the withdrawal of trade support appears to have been used in only two instances. It is therefore difficult to assess how effective the tool has been or could be in the future. In addition, the provincial trade promotion entities do not have similar policies, which means that a company might lose federal support but still be able to benefit from trade promotion activities at the provincial level.

35. The Working Group recommends that, in terms of demonstrating further leadership, the Government consider other mechanisms to ensure that clear expectations are set out for companies and that respect for human rights is a condition of receiving the Government's support or benefits. This would incentivize companies to engage in human rights due diligence and examine their own processes, including operational-level grievance mechanisms. The Government is therefore encouraged to explore what sort of commitments it might require at an earlier stage. For example, Export Development Canada requires human rights due diligence as part of its application process.

Public procurement

36. The Working Group was informed that Public Services and Procurement Canada, the main procurement agency for the federal Government, was examining how its own procurement processes and code of ethics[26] might be revised to require companies seeking a government contract to engage in human rights due diligence with respect to key human rights issues, such as human trafficking. The Working Group commends the Government for looking to its own commercial transactions and relationships as a government purchaser and encourages provincial governments to examine procurement as a tool for ensuring respect for human rights in its government contracting.

[25] See the corporate responsibility strategy adopted in 2014.

[26] Available from www.tpsgc-pwgsc.gc.ca/apropos-about/code-cond-eng.html.

VI. Specific issues

A. Labour rights

37. The Working Group received information concerning labour rights abuses, in particular those pertaining to persons with disabilities,[27] irregular migrant workers, foreign temporary workers, seasonal agricultural workers and subcontractors.

38. Civil society organizations informed the Working Group that persons with disabilities still suffered stigma and faced social barriers to entering the workforce, which impeded their ability to live independently and as part of their community. In that regard, the Working Group also notes the recommendations made by the Committee on the Rights of Persons with Disabilities on the need for a policy on the employment of persons with disabilities, including indigenous persons with disabilities, and for binding affirmative action measures to promote the employment of persons with disabilities in the public and private sectors (see CRPD/C/CAN/CO/1).

39. The Working Group also heard that the federal, territorial and provincial governments should review their current legislation and ensure that it is in line with international standards, notably the Convention on the Rights of Persons with Disabilities, to which Canada is a party. Government authorities should also take additional steps to further support the access of persons with disabilities to the workplace, in line with the recommendations of the Committee on the Rights of Persons with Disabilities.

40. Civil society organizations also raised concerns about workers who are unable to freely exercise their rights to organize and create their own unions to allow them to bargain collectively. This concern was particularly prevalent for seasonal agricultural workers,[28] irregular migrant workers, foreign temporary workers and subcontractors. The Working Group is pleased that Canada ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in June 2017[29] and recommends that the Government further implement the recommendations of the Committee of Experts on the Application of Conventions and Recommendations.

41. The Working Group heard from a number of stakeholders that irregular migrant workers, foreign temporary workers and seasonal agricultural workers are at significant risk of human rights abuses because of their irregular employment status. Reportedly, workers in irregular situations, in particular women, face harassment, including sexual harassment, and verbal or physical abuse, as they are unable to exercise their rights owing to contractual conditions.[30] Section 182 (1) of the Immigration and Refugee Protection Regulations,[31] regulating the restoration of temporary resident status, was highlighted by the Government as a successful protective measure. Federal government officials noted that there had been no reported cases in which foreign temporary workers who had lost their jobs had not been able to find another job in the allotted 90-day period.[32] This information runs counter to the information provided to the Working Group by other stakeholders in Canada. These groups of employees make important contributions to the economy but often face restrictions and barriers to their ability to access services and benefits. Irregular migrant workers, foreign temporary workers and seasonal agricultural workers are predominantly at risk of abuse as complaints may lead to them being fired or deported. The Working Group received information and read news reports about cases in which women had been forced to give sexual favours and unscrupulous employers had withheld wages and charged fees to irregular migrants, some of whom had had their passports withheld by their employers. It is therefore important that an effective mechanism be created by the federal and provincial

[27] See http://ccrweb.ca/sites/ccrweb.ca/files/tfwp-review-submission_1.pdf.

[28] See www.focal.ca/es/publications/focalpoint/457-june-2011-kerry-preibisch.

[29] The Convention will enter into force for Canada on 14 June 2018.

[30] See http://ccrweb.ca/en/canadian-ngo-report-women-and-children-migrants.

[31] Available from http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/section-182.html?term=182.

[32] See www.cic.gc.ca/english/resources/tools/temp/visa/validity/restoration.asp.

governments to monitor low-skilled and low-wage employment sectors with a prevalence of migrant workers, foreign temporary workers and seasonal workers so that their rights can be protected.

B. Women's rights

42. The Working Group appreciated the policy of both the federal and provincial governments to use the "gender-based analysis plus" tool to analyse their policies, programmes and laws.[33] The Working Group also observed, however, that certain social, economic and cultural structures in Canada still constrained the extent to which the unique experiences of women were recognized in a business context. Consequently, women continued to suffer from pay disparity, the gender division of work, harassment in the workplace and underrepresentation in top decision-making positions. In the 677 companies listed on the Toronto Stock Exchange, women occupied only 12 per cent of all board seats, and 45 per cent of those companies did not have a single woman on their boards.[34] The gender diversity disclosure requirement introduced by the Canadian Securities Administrators is a promising step, but more needs to be done to ensure that women, including those from indigenous communities, are adequately represented on corporate boards. The Working Group noted with interest bill C-25, which was introduced in September 2016 to promote corporate diversity, including by promoting the participation of women on corporate boards and in senior management positions.[35]

43. The Working Group also observed that women might be more vulnerable to discrimination and abuse because of a special working context (e.g., caregivers and call centre employees), while other women might be an easier target of violence because of the predominance of male workers in certain industries (e.g., the extractive industries). Both the Government and businesses should therefore pay special attention to preventing discrimination and sexual violence against women in those contexts and apply a gender lens to human rights and environmental impact assessments. Proactive measures should also be taken to address pay equity. The federal Government should fulfil its commitment to enact legislation to bridge the wage gap.

C. Human rights defenders and civic space

44. The Working Group was pleased to hear about the federal Government's efforts to develop policies to protect human rights defenders, such as the new guidelines on supporting human rights defenders.[36] The Working Group informed the Government that it was encouraging to see such developments given the large number of reported cases of attacks against human rights defenders linked to the operations of Canadian companies overseas.[37] The Working Group noted that, in the guidelines, it was recognized that Canadian business entities had a key role to play with respect to support for human rights defenders (see section 4.2 of the guidelines), which was an encouraging initial step. The guidelines refer companies to the 2014 corporate social responsibility strategy as a key reference point. A more explicit reference to the Guiding Principles and to respect for human rights would also be useful. The Government is further encouraged to develop training for its public servants and trade officers, as well as guidance for companies that relates more directly to the role of the private sector in ensuring respect for the rights of human rights defenders in the extractive sector and beyond.

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[33] See www.swc-cfc.gc.ca/gba-acs/index-en.html.

[34] See www.canada.ca/en/treasury-board-secretariat/corporate/reports/building-diverse-inclusive-public-service-final-report-joint-union-management-task-force-diversity-inclusion.html?wbdisable=true.

[35] Available from www.parl.ca/DocumentViewer/en/42-1/bill/C-25/first-reading.

[36] Available from http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

[37] See http://business.financialpost.com/legal-post/canadian-mining-companies-face-lawsuits-over-foreign-activities.

45. The Working Group is concerned about reports of the persecution of human rights defenders and environmentalists who have raised concerns about the operations of Canadian companies abroad. The allegations include sexual violence against and the arrest, harassment, intimidation, criminalization and even killing of human rights defenders and environmentalists.[38] The Working Group encourages the federal Government to continue to prioritize support for the work of human rights defenders and civil society organizations both at home and internationally. The Working Group also advocates that the federal Government set out a clear expectation that Canadian companies operating abroad should respect the rights of local human rights defenders and environmentalists and provide support to defenders and companies to enable the more effective protection of the legitimate activities of defenders.

46. The Working Group is encouraged by the positive work of the Government with local civil society organizations to help to develop their capacities. This type of initiative is long overdue and should draw upon the recommendations of the Special Rapporteur on the situation of human rights defenders (see A/72/170) and the Working Group's forthcoming guidance on the role of business in relation to human rights defenders who raise concerns about business-related human rights impacts.[39]

47. The criminalization of peaceful protest and the use of security personnel and police to break up and arrest activists who were exercising their democratic right to protest against business operations in Canada and in countries that host Canadian companies were raised with the Working Group.[40] The federal Government should communicate through all available channels that peaceful protest is a fundamental pillar of a strong, functioning democracy, and this message should be integrated into the training of security and law enforcement agents. Moreover, the Working Group is concerned about information concerning the misuse of legal processes and the courts as a way of silencing civil society organizations, human rights defenders and indigenous peoples who raise legitimate grievances. The Working Group heard from a civil society organization that was facing a costly legal battle merely for reporting the activities of extractive industries. The Government must do more to ensure that such types of legal actions are not used by corporations to deflect attention from genuine concerns and silence critics.

48. During the meetings with government officials in Ontario, the experts were encouraged to hear that the government of Ontario had legislation to prevent strategic lawsuits against public participation,[41] informed by the recommendations of the advisory panel on anti-strategic lawsuits against public participation legislation.[42] In its report of 2010, the panel highlighted the need for legislation to protect those who highlight issues of public interest and noted its support for the freedom of people to participate in matters of public interest.[43] This legislation is a welcome development, and the Working Group encourages the authorities in Ontario to share their experiences with other provincial government authorities to help them to develop their own legislation to prevent strategic lawsuits against public participation and build upon the work of the Ontario authorities. The Working Group also heard that the government authorities of Quebec had amended their Civil Code in 2009 so as to provide the courts with the ability to dismiss strategic lawsuits against public participation.[44]

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[38] See www.globalwitness.org/en-gb/campaigns/environmental-activists/defenders-earth/.

[39] See www.ohchr.org/EN/Issues/Business/Pages/HRDefendersCivicSpace.aspx.

[40] See www.theguardian.com/environment/andes-to-the-amazon/2014/aug/12/guatemala-gold-mine-protester-beaten-burnt-alive and www.theguardian.com/environment/andes-to-the-amazon/2015/dec/14/canada-justin-trudeau-mining-abuses-latin-america, respectively.

[41] Canada, Bill 52, Protection of Public Participation Act (2015). Available from www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3087&detailPage=bills_detail_the_bill.

[42] See www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/.

[43] See www.attorneygeneral.jus.gov.on.ca/english/anti_slapp/anti_slapp_final_report_en.html.

[44] See www.ulcc.ca/en/uniform-acts-new-order/current-uniform-acts/641-abuse-of-process-prevention/1416-legislation-on-abuse-of-process-2009.

D. Indigenous peoples

49. Indigenous peoples in Canada (First Nations, the Métis Nation and Inuit) make up about 4 per cent of the total population, representing more than 600 distinct nations and more than 60 indigenous languages, and around half of them live on their traditional lands.[45] The Working Group met with a number of individuals and groups from indigenous communities and learned of protests against several large-scale development projects, such as the proposed expansion of the Trans Mountain oil pipeline,[46] the construction of a large-scale hydroelectric dam, the Site C dam,[47] and the continued expansion of development projects of the extractive industries. In the case of the Trans Mountain oil pipeline, two reports were issued in which it was stated that adequate consultations with indigenous communities had taken place.[48] It is the Working Group's understanding, however, that not all affected groups and communities were consulted. United Nations human rights mechanisms have also repeatedly raised concerns about the adequacy of consultations with indigenous peoples affected by development projects, such as the situation of the Lubicon Lake Nation,[49] whose territories are affected by extensive oil sands extraction (see, for example, A/HRC/10/7/Add.3, A/HRC/18/35/Add.1 and E/C.12/CAN/CO/4-E/C.12/CAN/CO/5). In several indigenous territories, extensive mining and oil and gas extraction is accompanied with significant adverse environmental impacts affecting the right to health.

50. The Working Group was informed that indigenous communities, in particular those living in remote areas, did not have adequate access to safe drinking water as a consequence of environmental contamination and the lack of water treatment facilities.[50] The Working Group recommends that the Government fulfil its obligation to provide safe drinking water to all indigenous communities as a matter of priority, in line with the recommendations of the universal periodic review of Canada relating to water (see A/HRC/24/11).

51. One of the main grievances expressed by indigenous peoples was the lack of meaningful consultations and non-compliance with the requirement of free, prior, informed consent in the context of business activities on their lands. The Supreme Court established, in a series of decisions since 2014, that the Government has a legal duty to consult with indigenous peoples.[51] The Government has committed itself, as a top priority, to enhancing consultation, engagement and participatory capacity of indigenous groups in reviewing and monitoring major resource development projects.[52] This was also a key recommendation made by the Special Rapporteur on the rights of indigenous peoples in 2013 (see A/HRC/27/52/Add.2, para. 98).

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[45] See www.iwgia.org/regions/north-america/canada.

[46] See www.transmountain.com/.

[47] See www.bchydro.com/energy-in-bc/projects/site_c.html.

[48] See www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/pdf/TMX_Final_report_en.pdf and https://apps.neb-one.gc.ca/REGDOCS/Item/Filing/A77045.

[49] See www.lubiconlakenation.ca/.

[50] See, for example, www.hrw.org/report/2016/06/07/make-it-safe/canadas-obligation-end-first-nations-water-crisis.

[51] Section 35 of the Constitution Act of 1982 recognizes and affirms the rights of the aboriginal peoples of Canada, and the Constitutional Court has, in a number of decisions since 2014, clarified that the federal and provincial governments have a duty to consult indigenous peoples and, where appropriate, accommodate their views when considering actions that might adversely affect their rights, including land claims that are still to be established.

[52] Justin Trudeau, Prime Minister of Canada, "Mandate letter to the Minister of Crown-Indigenous Relations and Northern Affairs", 4 October 2017, available from https://pm.gc.ca/eng/minister-crown-indigenous-relations-and-northern-affairs-mandate-letter. The Truth and Reconciliation Commission also called for the corporate sector in Canada to commit to meaningful consultation, building respectful relationships and obtaining the free, prior, and informed consent of indigenous peoples before proceeding with economic development projects in its report entitled "Truth and Reconciliation Commission of Canada: calls to action", para. 92, available from http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf.

52. A key issue is how to reconcile the duty to consult with policy commitments to ensure meaningful consultations, in line with the letter and spirit of free, prior, informed consent as set out in the United Nations Declaration on the Rights of Indigenous Peoples. The Working Group was encouraged to hear that some provincial governments, including those of Alberta and British Columbia, had created ministries of indigenous relations and specific offices to support and manage consultations with indigenous peoples, and recommends that other provincial authorities do the same.[53]

53. While the duty to consult rests with the Government, the Working Group learned that, in practice, consultations about business operations and development projects are delegated to and carried out by the business enterprises involved, with limited oversight. The Working Group observed that there was often a lack of trust among indigenous communities that consultations had been carried out in good faith, and, over the past decade, more than 100 complaints have been filed with the courts by indigenous communities about the lack of meaningful consultations on business operations that affected their rights. While most of these cases have been won by the indigenous communities, the court rulings have not prevented the projects, mainly in the extractive industries, from going forward.[54] Rather, these cases seem to have served merely as reprimands to government authorities to ensure better consultation processes in future.

54. Indigenous peoples expressed concern that initial mineral exploration could be carried out and stakes be made on land in indigenous territories without prior notification. The Working Group learned that companies are required to notify communities only when especially heavy machinery is used for mineral exploration and that, in most provinces, consultations were mandatory only as part of the request for permission to begin extraction. As a consequence, consultations begin at a stage when significant investments have already been made and are approached in a box-ticking manner, rather than with a genuine desire to obtain the informed consent of the affected communities in accordance with the principle of free, prior and informed consent.[55] Some companies are making the business case for stronger engagement with indigenous communities to ensure their social licence to operate. The Working Group, however, saw a need for stronger engagement of the federal and provincial governments to facilitate meaningful consultation processes that aim to obtain the free, prior and informed consent of affected communities and to establish trust that such processes are not biased in favour of business interests.

55. Indigenous communities should be provided with resources to improve their understanding of the implications of proposed projects on their way of life and to conduct independent, cumulative and holistic impact assessments of projects with adequate gender-sensitiveness to ensure that the voices of all members of the communities are heard.

VII. Extractive industries

56. The extractive sector was an area of particular focus during the Working Group's visit because of its importance to the economy of Canada and its global footprint. Canada is home to more than half the world's mining companies, which operate in Canada and across the globe, and is a centre for extractive sector finance, with 57 per cent of the world's public mining companies listed on the Toronto Stock Exchange and the Toronto Stock Exchange Venture Exchange. Overall, the extractive industry (mining and oil and gas extraction) accounts for about 7 per cent of the country's gross domestic product, with the mining sector as the largest private sector employer, employing some 375,000 persons.[56] It is also the country's largest employer of indigenous persons.

[53] See http://indigenous.alberta.ca/; see also www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/indigenous-relations-reconciliation.

[54] See www.lib.sfu.ca/help/research-assistance/subject/criminology/legal-information/indigenous-scc-cases.

[55] See www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf.

[56] See www.statcan.gc.ca/daily-quotidien/170331/dq170331a-eng.htm.

57. The Government has undertaken a number of initiatives to address business and human rights in the extractive sector. Canada, for example, is one of the 10 Governments that are members of the Voluntary Principles on Security and Human Rights initiative, a multi-stakeholder process created in 2000 to help extractive companies to maintain the safety and security of their operations with due respect for human rights. In 2017, the Mining Association of Canada established a requirement that its member companies that rely upon private or public security forces must commit themselves to implementing a human rights and security approach consistent with the Voluntary Principles and based on a determination of risk at the mining facilities that they control. Furthermore, members with international mining operations must report annually on the implementation of their commitment through the progress report of the Towards Sustainable Mining initiative.[57]

58. The Working Group met with key trade associations in the extractive sector and noted that those that address Canadian activity overseas made some reference to human rights and the Guiding Principles in their guidance documents. The Mining Association of Canada, for example, refers to the Guiding Principles as part of its Towards Sustainable Mining initiative.[58] At present, however, its guidance to members does not fully address concepts such as human rights due diligence as outlined in the Guiding Principles. Other associations have focused on Canadian companies operating solely at home. The Canadian Association of Petroleum Producers, for example, has focused on specific areas of responsible development, rather than human rights due diligence.[59] Industry associations have a key role to play in disseminating the Guiding Principles and in encouraging their members to incorporate respect for human rights into their business operations both at home and abroad.

59. Some companies refer to the Guiding Principles in their corporate social responsibility strategies, and the Working Group noted efforts to align such strategies with key elements of the corporate responsibility to respect human rights, such as a human rights impact assessment undertaken by Goldcorp of its Marlin mine operations in Guatemala.[60] Goldcorp made the findings of the assessment public, and the Working Group noted that this was an example of a company using a human rights due diligence framework to identify and assess human rights impacts and that more companies should undertake such assessments.

60. Under the Extractive Sector Transparency Measures Act, which entered into force on 1 June 2015, extractive companies active in Canada are required to publicly disclose, on an annual basis, payments of 100,000 Canadian dollars or more made to all governments bodies in Canada and abroad if they relate to the commercial development of oil, gas or minerals.[61] The Working Group learned that the Act was supported by the private sector as well as civil society, serving as an example of effective multi-stakeholder collaboration to increase transparency and combat corruption. From 1 June 2017, the disclosure under this act includes payments made to indigenous governments in Canada, which might provide some measure of transparency with respect to payments that may be included in agreements, such as impact benefit agreements, concluded between companies and indigenous peoples.

VIII. Lessons from the Mount Polley dam breach

61. The Working Group learned, through meetings with local officials, business stakeholders and civil society organizations, that steps have recently been taken to improve the oversight of mining operations in the aftermath of the tailings dam breach at the Mount Polley mine in 2014. The dam failure resulted in the release of 8 million m^3 of mine tailings into Polley Lake, Hazeltine Creek and Quesnel Lake. Four lawsuits have been filed by

[57] See http://mining.ca/sites/default/files/documents/TSM-Progress-Report-2016.pdf.
[58] See www.ryerson.ca/content/dam/csrinstitute/key_dates/Chalmers-8may2014.pdf.
[59] See www.capp.ca/responsible-development.
[60] See http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf.
[61] See http://laws-lois.justice.gc.ca/eng/acts/E-22.7/page-1.html.

indigenous communities over the failure to protect against the environmental pollution of the lake caused by the breach. A study of the socioeconomic impacts is being undertaken by the provincial government and the mining company but has yet to be published. Indigenous First Nations conducted their own study and identified a high level of emotional stress related to concerns about the impacts of the contamination on fisheries and sacred land. The mining company and the provincial government are monitoring impacts on water quality, providing regular updates on dedicated websites.[62] The affected community members expressed concern about the long-term health impacts of the environmental contamination and their incomprehension at the fact that, after the spill, the company had been granted permission to discharge wastewater into the lake and that no one had been held accountable for the mining dam failure. The Working Group also met with civil society organizations and received their reports, which were based on interviews with indigenous communities that had been affected by the breach.[63]

62. The Working Group learned that, at the federal and provincial levels, efforts are under way to revise existing regulations on environmental and social impact assessments. In some provinces, such as British Columbia, there is now a requirement for impact assessments and environmental projects to be reviewed for major mines in accordance with the Canadian Environmental Assessment Act. The Working Group is of the understanding that the Mining Association of Canada also revised its guidance after the breach. In the context of the very large number of extractive industry operations in indigenous territories, indigenous communities are particularly exposed to environmental and social risks. The Working Group considers that the current impact assessment processes need to be significantly strengthened and made more sensitive to social impacts and the special relationship of indigenous peoples with their lands.

IX. Access to effective remedies

63. Human rights without effective remedies do not mean much in practice. Canada has a number of mechanisms, such as courts, human rights commissions and tribunals, the National Contact Point and the Corporate Social Responsibility Counsellor, to provide remedies for business-related human rights abuses. Nevertheless, the Working Group found evidence that victims of human rights abuses continue to struggle in seeking adequate and timely remedies against Canadian businesses.

A. Ombudsperson

64. During the country visit, the Working Group was made aware of a proposal to establish a human rights ombudsperson for the extractive industries.[64] Considering the significant footprint of the operations of the Canadian extractive industries overseas, the Working Group used its meetings with government officials to highlight the need for such an ombudsperson and was pleased to hear that, on 17 January 2018, the Government had launched the creation of two new initiatives to strengthen the country's approach to responsible business conduct for Canadian companies doing business and operating abroad.[65] The first was the creation of an independent Ombudsperson for Responsible Enterprise, and the second was the creation of a multi-stakeholder advisory body to advise the Government and the Ombudsperson on responsible business conduct abroad.

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[62] See www2.gov.bc.ca/gov/content/environment/air-land-water/spills-environmental-emergencies/spill-incidents/past-spill-incidents/mt-polley.

[63] See www.amnesty.ca/news/breach-human-rights-human-rights-impact-mount-polley-mines-disaster-british-columbia.

[64] See http://cnca-rcrce.ca/wp-content/uploads/2016/03/The-Global-Leadership-in-Business-and-Human-Rights-Act-An-act-to-create-an-independent-human-rights-ombudsperson-for-the-international-extractive-sector-11022016.pdf.

[65] See www.canada.ca/en/global-affairs/news/2018/01/the_Government_ofcanadabringsleadershiptoresponsiblebusinesscond.html.

65. As stated on the website of Global Affairs Canada, the Ombudsperson will be authorized to investigate allegations of human rights abuses arising from Canadian corporate activity abroad, recommend solutions and monitor the implementation of those recommendations. It will be guided by internationally respected norms, including the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.[66]

66. The role of the multi-stakeholder advisory body will be to advise the Government on the effective implementation and development of its laws, policies and practices relating to responsible business conduct by Canadian companies operating abroad in all sectors.[67] The multi-stakeholder advisory body will include civil society and industry members. The Working Group welcomes both initiatives by the Government and will continue to monitor the progress thereof.

B. National Contact Point

67. The National Contact Point is a committee composed of seven government departments.[68] Global Affairs Canada serves as Chair and Natural Resources Canada as Vice-Chair. The National Contact Point promotes awareness of the OECD Guidelines for Multinational Enterprises, which include a chapter on human rights that is aligned with the Guiding Principles. It also provides a forum for discussion to help to resolve issues relating to the implementation of the OECD Guidelines, including concerns about business-related human rights abuses. As part of their mandate, National Contact Points provide a mediation and conciliation platform for helping to resolve cases (known as "specific instances") of alleged non-observance of the Guidelines.[69] Information is publicly available on 17 previous cases addressed by the Canadian National Contact Point [70] and 2 ongoing specific instances.[71] The National Contact Point, which is chaired by a senior representative of Global Affairs Canada, the Director General of the Trade Commissioner Service — Operations, was perceived by stakeholders as potentially not fully independent given that it was within a ministry that was responsible for promoting overseas trade and investment. Stakeholders also noted that the National Contact Point had no external advisory or oversight body.

68. The Working Group learned that the National Contact Point had creatively used the threat of denying or withdrawing trade advocacy and economic diplomacy support as a lever against Canadian companies that refuse to engage in good faith with its mediation process. This lever was used against China Gold in 2014 after a complaint was made to the National Contact Point regarding 83 miners who were buried in a landslide at the copper polymetallic mine in Gyama, central Tibet.[72] Despite this example of a good practice, it was highlighted to the Working Group that the lack of confidence of civil society in the National Contact Point was apparent, which might have limited the number of cases brought before it. The Working Group also found it useful that diplomats posted at Canadian trade missions abroad were given training to detect at an early stage potential human rights concerns related to the business activities of Canadian companies and to inform the corporate social responsibility division at Global Affairs Canada, the Corporate Social Responsibility Counsellor and/or the National Contact Point.

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[66] See www.canada.ca/en/global-affairs/news/2018/01/advancing_canadasapproachonresponsible businessconductabroad.html.

[67] Ibid.

[68] See www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/index.aspx?lang=eng&menu_id=1&menu=R.

[69] See https://mneguidelines.oecd.org/Flyer-OECD-National-Contact-Points.pdf.

[70] See www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/closed-fermer.aspx?lang=eng.

[71] See www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/ongoing-en_cours.aspx?lang=eng.

[72] See www.international.gc.ca/trade-agreements-accords-commerciaux/ncp-pcn/statement-gyama-valley.aspx?lang=eng.

C. Courts

69. Canada has a robust and independent system of courts that can be accessed to seek remedies in cases involving human rights abuses by businesses. Despite a few recent cases being heard by courts in Ontario and British Columbia,[73] access to Canadian courts for people affected by the overseas operations of Canadian businesses remains a matter of concern. The Government should take measures to remove well-known barriers to access to judicial remedies, including for foreign plaintiffs, rather than wait for the courts to develop principles. In that respect, the guidance provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its report of May 2016 to the Human Rights Council (A/HRC/32/19 and A/HRC/32/19/Corr.1), the study of the Working Group on best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on the issue of business and human rights (see A/HRC/35/33) and the report of the Working Group on access to effective remedies under the Guiding Principles (see A/72/162) should be useful resources.

70. In 2004, the federal Government amended the Criminal Code so that companies and individual managers could be prosecuted for criminal negligence. Bill C-45, known as the "Westray amendments",[74] was a response to one of the deadliest mining incidents in Canadian history, where an explosion at the Westray mine in Pictou killed 26 underground mine workers.[75] Since the amendments took effect in 2004, there have been only 11 prosecutions in Canada, with three convictions and one person imprisoned. There have been no prosecutions in Alberta. The Working Group heard concerns that the Westray amendments were not being properly implemented and enforced and that there was a lack of coordination among key government parties, including the Royal Canadian Mounted Police, crown prosecutors and labour inspectors, with respect to securing sites of industrial accidents for further investigation and inspection. Stakeholders also noted that better coordination between the police and health and safety regulatory agencies was required.

71. The Working Group notes that the government of Alberta recently signed a new memorandum of understanding with 10 police forces. The memorandum defines the protocols for notification, investigation and communication between departments when there is a serious workplace incident. This will help investigators from all agencies to coordinate information to determine whether criminal charges may be warranted in addition to penalties for occupational health and safety violations. This is a promising initiative and other provinces may want to follow the lead of Alberta in exploring how better protocols can be implemented to prevent workplace deaths and injuries and to promote greater access to remedies in Canada.

X. National action plan

72. Canada was one of the first countries to undertake a multi-stakeholder dialogue on a national strategy to promote responsible business conduct, through the round-table discussions held in 2006. Many of the recommendations from that process remain relevant and could serve as a basis for renewed efforts to address the gaps identified in implementing all three pillars of the Guiding Principles. Building upon the work already undertaken to identify ways to strengthen business respect for human rights among Canadian companies abroad, it is also important to turn attention to the promotion of business respect for human rights in the country. In that regard, the Working Group encourages the federal Government to work with provincial governments to develop a national action plan on business and human rights in order to chart out the main business-related human rights risks, improve access to effective remedies and develop a mechanism

[73] Supreme Court of British Columbia, *Garcia v. Tahoe Resources*, judgment of 13 November 2015; and *Araya v. Nevsun Resources*, judgment of 9 January 2017.

[74] See www.justice.gc.ca/eng/rp-pr/other-autre/c45/.

[75] See www.cbc.ca/news/canada/nova-scotia/westray-remembered-explosion-killed-26-n-s-coal-miners-in-1992-1.1240122.

to share good practices among provinces on how to ensure respect for human rights by businesses.

73. The round tables held in 2006 to formulate a corporate social responsibility strategy for the extractive sector demonstrated that it is possible for the Government, business and civil society to find common ground. The Working Group found, however, that there was some frustration with respect to the fact that several of the joint recommendations made more than 10 years ago were still to be implemented. The development of a national action plan on the basis of the guidance[76] and general recommendations of the Working Group could serve as an opportunity to revisit the round-table recommendations, renew dialogue across main stakeholder groups and expand the scope of corporate social responsibility strategies to cover business respect for human rights in Canada as well as abroad.

XI. Conclusions and recommendations

A. Overall remarks

74. An overriding issue observed by the Working Group was the absence of a coherent policy framework for the State duty to protect against business-related human rights abuses and promote effective business respect for human rights, a problem that is exacerbated by the complexity of the overlapping and competing competencies of the federal and provincial levels of government. The federal Government is responsible for the oversight of business enterprises that are federally incorporated only (about 11 per cent of the 2.6 million businesses incorporated in Canada). The regulation and oversight of all other companies fall under the jurisdiction of individual provincial governments, each with their own independent regulatory framework.

75. The Working Group was encouraged to learn about the Government's efforts in providing training to overseas trade missions, in using levers to withhold and/or deny trade advocacy and economic support to punish companies that do not cooperate in good faith with the dispute resolution mechanism and in developing corporate guidance with respect to human rights defenders.

76. Areas in which the Government needs to intensify efforts include the need for a holistic environmental impact assessment strategy, the need to meet the requirement for free, prior and informed consent when holding meaningful consultations with indigenous peoples, responses to the exploitation of migrant workers and the further development of policies and guidelines to help to combat discrimination against women, building upon the "gender-based analysis plus" tool. The Working Group also saw a need for further clarification of the roles of the Corporate Social Responsibility Counsellor and the National Contact Point as a way of reducing barriers to access to justice, including for overseas victims of Canadian companies.

77. The Working Group was encouraged to hear from government authorities at the provincial and federal levels that they were committed to improving human rights at home and abroad and that there was political will to advance the human rights agenda. The Working Group was also pleased to see that there was a very active civil society in Canada that was involved in promoting business respect for human rights. Furthermore, the Working Group found inspiration from the testimonies of individuals from indigenous communities who shared their experiences and demonstrated their resolve to seek justice, improve the human rights of their communities and protect their traditional lands.

78. The Working Group saw the need for businesses, business associations and civil society to be more engaged in promoting and raising awareness of the Guiding Principles.

[76] Available from www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

B. Recommendations to the Government

79. **The Working Group recommends that the Government:**

(a) **Ensure that the Office of the Canadian Ombudsperson for Responsible Enterprise is well resourced, financially and with skilled personnel, so that it can provide effective and timely remedies and recommendations for complaints. Furthermore, the Office should have total independence from the Government, undertake meaningful investigations and have the investigatory powers to summon witnesses and compel stakeholders to produce documents and any other powers as are necessary to fully address human rights abuses;**

(b) **Ensure that the multi-stakeholder advisory body on responsible business conduct is staffed with independent personnel who have no conflict of interest and that the board is composed of an equal number of individuals from the various industry and civil society sectors, has gender balance and has one seat specifically for an indigenous representative;**

(c) **Take steps to enhance the effectiveness of the National Contact Point in providing remedies, make the National Contact Point more independent and vest it with adequate resources to discharge its mandate. The National Contact Point should include findings about breaches of the OECD Guidelines in final statements, improve transparency in its functioning and try to regain the trust of civil society in its utility as a provider of remedies. The peer review of the Canadian National Contact Point in February 2018 and the forthcoming report should be used as opportunities to address some of these concerns;**

(d) **Clarify more clearly the respective roles of the National Contact Point and the Canadian Ombudsperson for Responsible Enterprise, including with respect to advising companies, a role previously carried out by the Corporate Social Responsibility Counsellor. The Working Group suggests that the Counsellor should have a broader role in promoting business respect for human rights across all business sectors, not solely the extractive sector, and should focus primarily on raising awareness, advising and building capacity around business respect for human rights, while the National Contact Point and the newly established Ombudsperson could provide effective non-judicial remedies;**

(e) **Ensure that its existing and future trade and investment agreements include adequate safeguards to protect the environment and human and labour rights;**

(f) **Ensure respect for human rights in its own role as an economic actor through the development of policies on the basis of principles 4 and 6 of the Guiding Principles, for example, policies relating to public procurement, State-owned enterprises or crown corporations, export credit and development banks;**

(g) **Ensure that Export Development Canada considers ways to improve its internal processes to ensure public confidence in it, such as including human rights as a core pillar of its objectives and releasing an annual human rights report;**

(h) **Ensure that Global Affairs Canada explores additional tools of economic diplomacy that it could leverage to promote greater business respect for human rights;**

(i) **Ensure that provincial governments encourage industry associations and individual companies to respect human rights while conducting business, both domestically and overseas, using the Guiding Principles as a baseline to assess business respect for human rights;**

(j) **In the case of the Mount Polley incident, and in order to prevent such incidents in future, ensure the completion of the impact study and continue to monitor closely the short- and long-term impacts of the tailings discharge. All findings should be communicated to the affected communities in a fair, transparent and well-timed manner. The Working Group also recommends that the person or persons responsible**

for the breach be held accountable for their actions and that the affected communities be notified of all future discharge permits. The Working Group further recommends that the Government implement the recommendations relating specifically to the Mount Polley breach and those relating to the situation of indigenous peoples highlighted in the concluding observations of the Committee on the Elimination of Racial Discrimination (see CERD/C/CAN/CO/21-23);

(k) Work with the provincial and territorial governments to strengthen access to both judicial and non-judicial remedial mechanisms;

(l) Encourage businesses to establish operational-level grievance mechanisms in conformity with the effectiveness criteria stipulated in principle 31 of the Guiding Principles and in accordance with the recommendations of the Working Group in its 2017 report to the General Assembly (see A/72/162);

(m) Address barriers for individuals and communities affected by the overseas operations of Canadian businesses to seek effective remedies in Canada in appropriate cases. Implement the policy recommendations of OHCHR and the Working Group (see A/72/162, A/HRC/32/19 and A/HRC/35/33);

(n) Encourage businesses to give more attention to how the Guiding Principles can help to improve business respect for human rights in Canada, for example, by ensuring meaningful stakeholder engagement processes and strengthening company-based grievance mechanisms and human rights due diligence in high-risk sectors;

(o) Ensure that immediate action is taken, in conjunction with federal, provincial and territorial authorities, to investigate the disappearances of indigenous women[77] and prioritize their safe, secure return and recommendations from civil society to end violence against women and girls;[78]

(p) Strengthen mechanisms for sharing information and good practices between federal and provincial authorities, as well as across departments at the federal and provincial levels, through regular meetings of federal and provincial ministers;

(q) Implement the principle of free, prior and informed consent set out in the United Nations Declaration on the Rights of Indigenous Peoples and ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and conduct wide consultations with all stakeholders to implement the Declaration in the context of the existing regulatory frameworks in place at the federal and provincial levels;

(r) Develop a gender-sensitive national action plan to implement all three pillars of the Guiding Principles.

C. Recommendations to businesses and industry associations

80. Business enterprises should take steps to implement pillar 2 of the Guiding Principles through policy commitments to respect human rights, human rights due diligence, remediation policies and operational-level grievance mechanisms.

81. Business associations should take proactive measures to encourage and build the capacity of their members to respect human rights, in line with the Guiding Principles, including by organizing peer-learning workshops.

82. Businesses should apply a gender lens when conducting human rights impact assessments, administering operational-level grievance mechanisms and negotiating impact benefit agreements. They should also show sensitivity to the special relationship of indigenous peoples with their lands in conducting informed and

[77] See www.amnesty.ca/our-work/campaigns/no-more-sto'en-sisters.

[78] See www.amnesty.ca/blog/16-things-canada-can-do-now-end-violence-against-indigenous-women-and-girls.

meaningful consultations in accordance with the principle of free, prior and informed consent.

83. **Businesses and business associations should develop policies that address the protection and promotion of human rights defenders both in and outside Canada.**

84. **Businesses should initiate informed and meaningful consultations with affected communities as early as possible, including at the stage of staking claims for extractive industry projects. Furthermore, rather than engaging only chiefs and band councils, consultations should be conducted widely with the communities that may be affected by proposed business activities.**

D. Recommendations to civil society organizations

85. **The Working Group recommends that civil society organizations:**

(a) **Continue to raise awareness about the obligations and responsibilities of the State and business enterprises under the Guiding Principles to prevent and address adverse human rights impacts related to the operations of business enterprises and to promote access to justice and grievance mechanisms;**

(b) **Continue to document and raise before all appropriate national, regional and international forums cases of human rights violations and abuses, in particular those committed against environmentalists and human rights defenders;**

(c) **Engage in a multi-stakeholder process to contribute to the development of a national action plan on business and human rights, and facilitate the full participation of all stakeholders, including indigenous peoples and women.**

E. Recommendation to the Toronto Stock Exchange

86. **The Toronto Stock Exchange should encourage its members to respect human rights in line with the Guiding Principles and to proactively develop policies in that regard.**